Supreme Court, U.S.
FILED
MAR 5 - 2004
OFFICE OF THE CLERK

No. 03-839

In the

# Supreme Court of the United States

**In re, JOSEPH A. GENTILUOMO,**
***Petitioner,***

**BRUNSWICK BOWLING AND BILLIARDS CORPORATION**
(Individually and doing business as Brunswick
Technology Ventures), and as Quantum
and
**COLUMBIA 300, INC.**
(Individually and doing business as Track, Inc.),
and
**PIN BREAKER INC.,**
***Respondents.***

PETITION FOR WRIT OF MANDAMUS TO THE
UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

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## PETITION FOR REHEARING

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The Petitioner, Joseph A. Gentiluomo, requests that his "Petition For Writ Of Mandamus" be reconsidered, due to the extraordinary circumstances prevailing in this case. The extraordinary circumstances pertain to the lower courts' **violation** of both Federal Circuit and Supreme Court precedential laws, regarding **critically important issues**.

As stated in the writ of mandamus, the District Court **violated** well established precedential case laws of Graham v. John Deere and McKay v. United States, by failing to **legally consider** the claimed invention taken as a whole, and Gentiluomo's cross-motion for summary judgement.

The Appeals Court stated at 6 of its June 5, 2002 decision that it reviews a District Court's grant of summary judgement de novo, reapplying the same standard used by the District Court. Citing Ethicon Endo-Surgery, Inc. v. United States Surgical Corp., 149 F. 3d 1303,1315(1998). Also, at 7 the Court stated that it reviews a District Court's underlying findings of fact for clear error, while it rules de novo on the ultimate issue of obviousness. If this is the case, why didn't the Appeals Court ascertain that the District Court **never made a proper legal determination** regarding the standard of review for determining obviousness, as enunciated by the Supreme Court in Graham v. John Deere; and the standard of review for considering cross-motions as enunciated by the Circuit Court of Appeals in McKay v. United States? Had the Court done so, it would have noted that the District Court presented **no factual findings, whatsoever**, upon which to base a **legal determination** regarding above cited **critical issues**. So, how can the Appeals Court infer that it made a **de novo** determination based on **factual findings that were never made in District Court**? Where the District Court, in violation of the federal rules of civil procedure, fail to determine the essential facts upon which it based its judgement, the Court of

Appeals cannot make such findings of fact. Bay Sound Transp. Co. v. U.S., 410 F. 2d 505(1969).

To compensate for the District Courts' lack of factual findings, the Appeals Court at 9 of its June 5, 2002 decision, **inappropriately made factual findings that were never made by the District Court**. This constitutes a **flagrant legal error,** since the District Court never determined the scope and meaning of the claims at issue. As stated in the mandamus petition, the **appellate court of the federal system neither inherently nor by grant, express or implied, have the power to make factual findings**. Randall Foundation, Inc. v. Riddell, 244 F. 2d 803 (1957). Where the trial court made no findings on certain issues, the Court of Appeals could not make such findings, even if it were possible upon the record. Deering-Milliken & Co. v. Moder-Aire of Hollywood, Inc., 231 F. 2d 623(1956). Based on presented facts, who is supposed to adjudicate such **flagrant violations of established precedential laws,** when the Supreme Court refrains from passing judgement on such important critical issues?

Another **critical** legal issue pertains to the Appeal Court's denial of Gentiluomo's writ of mandamus based on Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1,9 n. 6 (1983). The Appeals Court **flagrantly abused its discretion** when it decided the mandamus issue in a way that **highly conflicts** with the decision rendered by the Supreme Court in the above cited case law of Hospital v. Mercury. As stated a 15-16 of Gentiluomo's mandamus petition, the legal precedent set forth in the Hospital v. Mercury, which was relied upon by the Court of Appeals in the denial of the petition at issue, **does not apply** to the prevailing circumstances associated with Gentiluomo's petition. Gentiluomo presented evidence why Hospital v. Mercury was an erroneous case law upon which to deny

Gentiluomo's writ of mandamus. Yet, in spite of the Appeal Court's **outright violation** in the use of Hospital v. Mercury, the Supreme Court elected not to resolve the **critical legal issue** as to whether or not the Appeals Courts' denial of Gentiluomo's writ of mandamus was erroneous, because it was based on inapplicable case law.

The Court should also consider that pursuant to Supreme Court Rule 15(2) a waiver for filing a brief in opposition to Gentiluomo's petition for writ of mandamus, must be treated as a binding admission that the Respondent's have no argument toward a denial of said petition, and further that they perceive **no misstatements of both fact or law** in said petition. This means that the Respondent's have **conceded** that **factually and legally** the Petitioner's arguments regarding the lower courts' **violation of precedential case laws,** through a neglect to perform legally required nondiscretionary duties mandated in Graham v. John Deere and McKay v. United States, **are true.**

By refraining to adjudicate the herein cited **critical legal issues,** the Supreme Court is essentially **condoning** the lower courts **violation** of both **Federal Circuit and Supreme Court law.** This, in essence, is giving corporations an open invitation to outright **steal** an independent inventor's patented invention, such as to make a **farce** out of the United States patent system.

Since the Supreme Court elected not to hear the instant case, who is left to provide supervisory authority over lower courts, in order to ascertain whether precedential case laws were violated in decisions rendered? Are the lower courts above the law, such that they can violate any law they please, and not be held accountable for their actions? Alabama Supreme Court Chief Justice Roy Moore was held accountable for his actions for violating the law. Therefore, it is not

understood why the United States Supreme Court is not interested in holding the federal court judges involved in this case accountable for their actions for violating Federal Circuit and Supreme Court laws, listed infra. There appears to be something drastically wrong with the United States judicial system, especially since judges were sworn to uphold the law. The Supreme Court's decision to deny writ of mandamus, sends a **disturbing message** that **judicial misconduct** by lower courts is acceptable, and does not fall within the jurisdiction of the Supreme Court. Supreme Court Rule 10 indicates that a **violation of the law** by lower courts, falls within the jurisdiction of the Supreme Court.

In the instant case, the lower courts **flagrantly violated** precedential case laws of Graham v. John Deere; McKay v. United States; Ethicon Endo-Surgery, Inc. v. United States Surgical Corp.; Bay Sound Transp. Co. v. U.S.; Randall Foundation Inc. v. Riddell; Deering-Milliken & Co. v. Moder-Aire of Hollywood, Inc.; and Hospital v. Mercury.

It is **inconceivable** that the Supreme Court has no interest in hearing a case that exhibits **judicial misconduct** through **a clear abuse of discretion** by lower courts, regrading **flagrant violations** of **all** the above cited case laws. **Based on presented facts, how is a person supposed to obtain justice, when he has no other legal means available to him, and the Supreme Court exhibits no interest in rectifying the cited flagrant abuse of judicial power displayed by the lower courts?**

**A writ is appropriately issued when there is an usurpation of judicial power, or a clear abuse of discretion. Schlagenhauf v. Holder, 379 U.S. at 110. Function of mandamus is to correct an abuse of judicial power, or a refusal to correct it. Roche v. Evaporated Milk Association, 319 U.S. at 31.**

# Supreme Court of the United States

## Certification of Petitioner

The Petitioner Joseph A. Gentiluomo, certifies that his petition for rehearing is restricted solely to the grounds specified in the Supreme Court Rule 44(2), and is presented in good faith for the sole purpose of obtaining justice, and not for delay.

Joseph A. Gentiluomo

Joseph A. Gentiluomo, Pro Se

Date: March 3, 2004